

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANDRES TZUNUX-ORDONEZ,

Defendant.

No. 19-CR-1008 CJW

**ORDER REGARDING MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION
CONCERNING DEFENDANT'S
GUILTY PLEA**

I. INTRODUCTION AND BACKGROUND

On June 5, 2019, a three-count Superseding Indictment was filed against defendant. On June 27, 2019, defendant appeared before United States Magistrate Judge Mark Roberts and entered a plea of guilty to count two of the Superseding Indictment. The plea was made pursuant to a plea agreement, pursuant to Rule 11(c)(1)(C), meaning that it would be binding on the Court if accepted. On June 28, 2019, Judge Roberts filed a Report and Recommendation in which he recommended that defendant's guilty plea be accepted. The parties did not file objections to Judge Roberts' Report and Recommendation. The Court, therefore, undertakes the necessary review of Judge Roberts' recommendation to accept defendant's plea in this case.

II. ANALYSIS

Pursuant to statute, this Court's standard of review for a magistrate judge's report and recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b)(1)(C).

Where parties make no objections to a magistrate's report and recommendation,

the Court reviews the magistrate's report and recommendation for clear error. 28 U.S.C. § 636(b)(1)(A). Similarly, Federal Rule of Criminal Procedure 59(b) provides for review of a magistrate judge's report and recommendation on dispositive motions, where objections are made, as follows:

The district judge must consider de novo any objection to the magistrate judge's recommendation. The district judge may accept, reject, or modify the recommendation, receive further evidence, or resubmit the matter to the magistrate judge with instructions.

FED. R. CRIM. P. 59(b)(3).¹

In this case, the parties filed no objections, and it appears to the Court upon review that Judge Roberts' findings and conclusions are not clearly erroneous. Therefore, the Court **ACCEPTS** Judge Roberts' Report and Recommendation of June 28, 2019, and **ACCEPTS** defendant's plea of guilty in this case to count two of the Superseding Indictment. The Court reserves ruling on whether to accept the terms of the Rule 11(c)(1)(C) plea agreement until after the completion of the Presentence Report and the sentencing hearing. If, at the time of sentencing, the Court does not accept the terms of the plea agreement, defendant will be allowed to withdraw his guilty plea.

IT IS SO ORDERED this 15th day of July, 2019.



C.J. Williams
United States District Judge
Northern District of Iowa

¹ *United States v. Cortez-Hernandez*, 673 F. App'x 587, 590-91 (8th Cir. 2016) (per curiam), suggests that a defendant may have the right to de novo review of a magistrate judge's recommendation to accept a plea of guilty even if no objection is filed.